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FREQUENTLY ASKED QUESTIONS ABOUT USING THE NEW DOE ENERGY SAVINGS PERFORMANCE CONTRACTS (ESPCS)

DOE's New Indefinite-Delivery, Indefinite-Quantity (IDIQ) ESPC Contracts

Why did DOE recompete its IDIQ ESPC contracts? Are the new IDIQ contracts better? What are the major differences between the previous and the new IDIQs?

DOE, like many agencies, follows the government's general procurement policy of recompeting IDIQ contracts every five years. DOE believes the new IDIQ contract is in fact better for a variety of reasons: terminology is revised to be in line with statute and/or industry practices; new legislative requirements are incorporated; ESPC programmatic improvements are added; lessons learned are taken into account; and from an administrative viewpoint the contract is expected to function more efficiently.

Geographic Scope

Are ESPC projects at sites outside of the United States and its territories allowable under the new indefinite-delivery indefinite-quantity (IDIQ) ESPCs?

Yes. Any of the new IDIQ contracts may be used by Federal agencies for all federally owned buildings and facilities worldwide in accordance with the procedures established in the new IDIQ contracts.

TO Period of Performance

What is the task order (TO) period of performance?

TOs issued by agencies under DOE's new IDIQ contracts may be for a term up of 25 years, including the construction period.

Initial Proposal vs. Preliminary Assessment

What is the difference between an Initial Proposal (IP) and a Preliminary Assessment (PA)? What are the requirements under a PA? What kind of technical assessment is the agency required to do of a PA?

The PA has replaced the IP to allow for an expedited process to get from project kickoff to the agency decision to issue a notice of intent to award a TO, and to be in line with statute and/or industry practices. The energy services company (ESCO) will submit a PA to the government which sets out the merits, technical feasibility, level of projected energy savings, economics, and price of the project. At a minimum, the ESCO should include in its PA technical and price assessments in a format in accordance with agency requirements.

The PA should include:

- an overview of the proposed project;
- a description of each energy conservation measure (ECM) proposed;
- a general description of the proposed Measurement and Verification (M&V) plan; and
- a management approach to implementing the TO project.

It is recommended that the PA be approximately 20 pages, except in instances where the ESCO, or agency guidance, requires more pages to adequately address each of the requirements of this section. The agency will not be liable for any costs associated with the PA audits or preparation of the PA unless the project addressed by the PA later becomes a TO award.

Investment-Grade Audit (IGA) vs. Detailed Energy Survey (DES)

What is an IGA and how does it differ from a DES? What happens during an IGA and what are the roles of the contractor and agency?

The DES is now called the IGA to be in line with statute and/or industry practices. Once formally selected, the ESCO will conduct an IGA of facilities and energy systems at the project site to substantiate its ability to achieve the estimated total cost savings for the site. For each ECM identified, the ESCO is to provide a detailed analysis documenting the proposed annual energy or water savings performance of the ECM after installation, startup, and testing.

The ESCO is to provide documentation of the IGA, including the proposed energy baseline, to the agency in a format agreed to by the agency. The ESCO, project facilitator (PF), and agency will meet to review the results and findings of the IGA. The meeting should include a comparison of the proposed annual energy and water savings to current total site annual energy and water use and costs (in terms of both dollars and energy or water quantities).

One-Time Payments (or Implementation-Period Payments)

Are one-time payments allowed in the new IDIQ?

Yes. DOE has interpreted the legislation to permit payment under an ESPC from a one-time avoided cost that would have been paid for from an appropriated funding source absent an ESPC, such as costs for which funds have been appropriated or otherwise made available for an operation and maintenance (O&M) project or repair and replacement (R&R) project that will not be necessary because of the ESPC project. For example, if funding had been made available to repair a boiler that is being replaced under an ESPC, the funds for repair would no longer be needed and could therefore be applied to the ESPC.

The Energy Independence and Security Act of 2007 included an amendment to the ESPC authority related to funding that allows an agency to use a combination of appropriated funds and private financing for an ESPC. DOE interprets the funding amendment to expressly authorize payments to ESPC contractors from savings that result from avoided costs related to utilities, O&M, or R&R. DOE has also interpreted the new funding language to authorize payments from savings that result from avoided costs that would have been paid for from funding authorized or otherwise made available specifically for energy efficiency improvements.

Renewable Energy

Has the definition of renewable energy expanded as it relates to allowable technologies under the new IDIQ? What kind of services related to renewable energy can agencies expect from the ESCO? From DOE?

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The new IDIQ contract places particular emphasis on assessing renewable energy opportunities along with other ECMs. It is the agency's responsibility to communicate to the ESCO its federal renewable energy goals and other agency renewable energy purchase goals.

The term ECM includes renewable energy systems and other measures that result in energy, water, or related cost savings, including measures that improve the efficiency of energy production systems that generate electrical and/or thermal energy. For purposes of this definition, "improves energy efficiency" is not limited to more efficient conversion of energy; rather, when renewable energy is substituted for conventional energy fuels, reducing the government's usage of conventional energy sources, such a substitution constitutes "improved energy efficiency."

DOE is available to provide technical support to agencies through the FEMP Federal Financing Specialists and PFs on advanced efficiency and renewable energy projects in the ESPC development phase and throughout the life of the project as necessary. DOE's National Laboratories have developed screening and analysis tools for renewable and emerging technologies and will collect data on their economic feasibility for agencies to use in considering these technologies prior to kickoff meetings with ESCOs.

The ESCO is responsible for the following:

- Considering the agency benefits of the sale of renewable energy credits (RECs) for projects on federal property
- Identifying available compulsory or voluntary markets and describing the renewable energy production and valuation alternatives for REC sales
- Assessing whether the value of RECs exceeds the administrative costs to the contractor or the agency in acquiring, selling, or otherwise administering the RECs
- Assessing other administrative provisions such as double-counting for renewable energy produced and used, interest in and ownership of all the RECs, and coordination and preparation of all pertinent documentation.
- Considering the agency benefits of applying for White Tags™ (also known as Energy Saving Certificates), as available, for TO ECMs on Federal property
- Identifying applicable ECMs and White Tags™ certification requirements and addressing whether their value exceeds the administrative costs to the ESCO or the agency in applying for, selling, or otherwise administering them
- Coordinating administrative aspects of preparing all documentation required to acquire revenues from White Tag™ certificates with the agency
- Addressing the alternatives for using the financial benefits of White Tag™ sales revenue for the project

Unless otherwise specified in the TO, interest in and ownership of all White Tags™ resulting from renewable energy produced on site at a federal facility will remain with the government.

White Tags™ are a relatively new area in the Federal Government's portfolio of renewable energy implementation options and have tradable attributes similar to RECs or Green Tags™ that represent the value of energy conserved at facilities. White Tags™ represent the contractual right to claim the environmental and other attributes associated with electricity generated from a renewable energy facility. They may be traded independently of the energy.

Incentives and Credits

Who is responsible for assisting agencies with potential energy efficiency and renewable energy and water financial incentives? Project emission reduction credits? Project tax incentives?

The ESCO's responsibilities in regard to incentives and credits are to:

- Determine all incentives and credits offered by the local utility serving the facility, or federal, state, or local government or air quality organizations including:
  - EERE and water financial incentives
  - tax incentives for EERE projects
  - emission reduction credit programs
- Coordinate preparation of all of the documentation required to apply for credits and incentives with the agency contracting officer, and apply for them effectively;
- Assess whether the value of the credits or incentives exceeds the administrative costs to the ESCO or the agency for acquiring them;
- Address IRS regulations regarding owner/agency transactions to fully support successful leveraging of credits and incentives.

The agency should be aware that nongovernmental ownership of energy efficiency, renewable energy, and water assets may be required to capture the benefits of Investment and Production Tax Credits and Modified Accelerated Cost Recovery System (MACRS) accelerated depreciation.

Measurement & Verification (M&V)

The M&V requirements are more rigorous under the new IDIQ. What are the new M&V requirements? Who needs to be cognizant of the M&V, and how does one become trained in understanding the M&V requirements? Is stipulation of the energy savings allowable under the new IDIQ? What if an agency's resources for witnessing M&V activities and reviewing calculations are constrained? What should the agency do if the M&V report submitted by the ESCO has discrepancies?

The new M&V requirements in the IDIQ are there primarily to incorporate best practices that are intended to eliminate performance-period misunderstandings and assure persistent savings.

The M&V plan is the primary vehicle for first documenting and then periodically evaluating the performance expectations of the TO project. The new IDIQ requires additional details in the M&V plan to ensure that the ESCO and agency will thoroughly understand what the TO covers. Specifically, the M&V Plan must state, in a clearly understandable format:

- Where and how all cost savings are going to occur and how they are to be calculated and verified;
- All systems or portions of buildings that are — and are NOT — included in the scope of the project;
- The ECMs that generate savings and the building systems that they affect;
- In the affected buildings, any significant energy- or water-using building systems or uses that will not be affected by the TO, to clarify the extent to which total energy, water, and related costs at the site will be affected.

The first step in developing an M&V plan is completing a Risk, Responsibility, and Performance Matrix, which indicates agreements between the ESCO and agency on the responsibility for and performance of actions. The M&V options and methods proposed for each ECM are required to comply with the International Performance Measurement and Verification Protocol (IPMVP) as well as the DOE FEMP M&V Guidelines, with the FEMP Guidelines taking precedence in case of any conflicts.

(FEMP ESPC resources are at http://www1.eere.energy.gov/femp/financing/espcs_resources.html.)

The IDIQ requires active agency input regarding the pre-installation baseline, which is now defined to include factors beyond the ESCO's control that influence post-installation energy use (e.g., building occupancy, weather, plug load creep, etc.). The agency and ESCO must agree on what measures may be taken if needed to adjust the baseline, modify savings, or otherwise account for such factors. To make presentation of the verified savings more straightforward, adjusting the calculation methodology for savings is preferable to changing the baseline. The Risk, Responsibility, and Performance Matrix will serve as the guide for reaching such agreements. The definition of ALL elements of the pre-installation baseline will be agreed upon prior to TO award.

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The ESCO is required to verify operation of the installed equipment/systems, calculate the previous year's energy and water savings, and compare verified and guaranteed savings.

The agency must witness M&V activities and review calculations, utility bill records, and other elements of the baseline to confirm that the approved M&V plan is followed, as described in FEMP's Guide to Government Witnessing and Review of Post-Installation and Annual M&V Activities.

(FEMP ESPC resources are at http://www1.eere.energy.gov/femp/financing/espcs_resources.html.)

The agency should review the post-installation report and annual M&V reports received from the ESCO as recommended in FEMP's Reviewing Performance Reports for Federal ESPC Projects, and agency acceptance must be documented in writing. Agency review and acceptance of annual M&V reports constitutes documentation to determine the amount of contractor payment and must follow FEMP's Guide to Government Witnessing and Review of Post-Installation and Annual M&V Activities.

Agencies may continue to stipulate values to be used in determining savings, but must follow the FEMP guidance in Detailed Guidelines to FEMP M&V Option A, which provides the information needed to ensure that stipulations are used appropriately. The guidance is at http://www1.eere.energy.gov/femp/financing/espcs_resources.html.

It is the agency's responsibility to be knowledgeable of M&V options, methods, and requirements. In addition, the agency is responsible for approving the ESCO's M&V plan according to FEMP's guidance. The agency can become more proficient in M&V requirements by attending FEMP's ESPC workshops, through support from the DOE PFs, and through direct FEMP assistance in understanding the guidance. If the agency has comments on the M&V plan and subsequent report submittals, they can request that the ESCO address them. In some cases the ESCO has to issue a revised M&V report. Usually the agency doesn't pay until they have approved the annual M&V report.

Operations & Maintenance Training Requirements

What are the new O&M training requirements under the new IDIQ?

It is the ESCO's responsibility to annually provide a training program for agency personnel and/or agency contractors to operate, maintain, and repair ECM equipment, unless otherwise specified in the TO. The agency will benefit from having a customized training program provided each year.

It is the ESCO's responsibility to describe in detail how training for each ECM will be provided for agency personnel. The ESCO's approach should depend on the level of O&M responsibility to be assumed by agency personnel. Regardless of who performs O&M activities, the ESCO is responsible for assuring ECM performance.

Project Acceptance by the Government

What are the steps that occur prior to the government accepting a project? When does government acceptance occur in the process under the new IDIQ? Does the government's approval of the contractor's commissioning report constitute acceptance of contractor's achievement of facility performance requirements? Can the government do a partial project acceptance?

The new requirements for project acceptance incorporate best practices for ensuring that the ESCO and agency agree on performance expectations and standards and for assuring the integrity of the technical work.

As a first step leading to the government accepting an ESPC project, each TO will include specific inspection criteria for the ESPC project. The following general inspection requirements will apply to each TO, unless otherwise indicated in the TO:

- The agency and ESCO are to jointly inspect ECMs. Inspections will be conducted simultaneously, when possible, by both the agency and ESCO representatives to facilitate mutual agreement on satisfactory ECM performance.
- The ESCO is to notify the agency contracting officer (CO) in 15 working days in advance of the completion of ECM installation (or other period specified in the TO) by submitting a written request for inspection.
- The agency should provide written notification to the ESCO of scheduled date and time for agency inspection within 10 working days after receipt of inspection notification and request (or other period specified in the TO).
- Each TO may include additional agency-specific or site-specific inspection requirements. The contractor shall review the TO to determine the inspection requirements.

Partial Project Acceptance - The agency may agree in writing to accept ECMs that are installed and operational prior to completion of the Implementation Period.

Full Project Acceptance - After installation of all ECMs the agency will notify the ESCO in writing of full project acceptance, which will constitute the start of the post-acceptance performance period and commencement of ESCO payments.

It is the ESCO's responsibility to provide the agency with an ECM Commissioning plan that assures the agency that the performance of the ECMs achieves facility and/or process performance requirements as set out in the TO. ECM Commissioning is to be accomplished in accordance with Commissioning Guidance for DOE Super ESPCs. (FEMP ESPC resources are at http://www1.eere.energy.gov/femp/financing/espcs_resources.html.)

Final Proposal

What are the new elements required for the Final Proposal (FP)?

The ESCO is responsible for submitting an FP consisting of technical and price components, as well as an individual small business subcontracting plan for each task order, in electronic format, or as required in the TO.

As with the PA, particular emphasis should be placed on assessment of renewable energy opportunities. The FP is also required to provide:

- an overview of the project including the site description and utility summary,
- the energy baseline, and
- ECM descriptions including projected energy use and cost.

The commissioning plan must be prepared and followed in accordance with the Commissioning Guidance for DOE Super ESPCs, at http://www1.eere.energy.gov/femp/financing/espcs_resources.html.

The management approach for O&M and R&R must include, at a minimum, ECM-specific preventive maintenance requirements and their frequency of performance.

Modifying Contract Clauses Through the Task Order Request for Proposal (TO RFP)

Can agencies add or modify contract clauses for their TOs using the TO RFP?

Yes. An agency may revise the specific requirements of their TOs (based on the needs and regulations of the agency) within the overall scope of the contract by using the TO RFP.

Small Business Concerns

Are there provisions for small business concerns under the new IDIQ?

Yes. To the maximum extent practicable, ESCOs will have goals for small business concerns controlled by socially and economically disadvantaged individuals or by women. For each TO, the ESCO must submit a small business subcontracting plan in the Final Proposal.

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SUPER ESPC ESCO CONTACTS

The following energy service companies (ESCOs) were awarded the current DOE energy savings performance contracts based on demonstrated capabilities to manage the development and implementation of multiple ESPC projects worldwide.

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